



IN THE  
**SUPREME COURT OF THE UNITED STATES**

October Term, 1956

No. ~~411~~ 18

CITY OF DETROIT, a Michigan Municipal Corporation, and  
COUNTY OF WAYNE, a Michigan Constitutional Body  
Corporate,

*Appellants,*

THE MURRAY CORPORATION OF AMERICA, a Delaware  
Corporation, and THE UNITED STATES OF AMERICA,  
Intervenor,

*Appellees.*

**PETITION FOR LEAVE TO FILE A BRIEF  
AMICUS CURIAE AND BRIEF AMICUS CURIAE**

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Corporate,

*Appellants,*

*v.*

THE MURRAY CORPORATION OF AMERICA, a Delaware  
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## PETITION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE

The City of Milwaukee, a municipal corporation organized and existing under the laws of the State of Wisconsin and its own special charter, pursuant to Rule 42, hereby petitions for leave to file a brief *amicus curiae*.

### BRIEF AMICUS CURIAE

The City of Milwaukee is the largest municipality in the State of Wisconsin, having a population in excess of 650,000 people. Together with the urban area surrounding Milwaukee there are in excess of 900,000 people in the employment of various industries in the Milwaukee urban area. The City of Milwaukee and its environs compose the industrial, financial and transportation hub of the State of Wisconsin, a state which in the last 10

years has changed from a state having an essentially farm and agricultural economy to one being supported by industry in ever-increasing measure.

Contrary to popular belief, the basic Milwaukee industry is not the brewing industry, although that produces a large number of jobs. The heavy machinery and machine tool industry in Milwaukee and other metal fabricating industries, such as foundries, compose the greatest and steadiest source of income to Milwaukee families and to the governments which control the Milwaukee metropolitan area. These industries provide many of the necessities for the defense of this country:

This case presents a problem with which the City of Milwaukee will be faced in an ever-increasing amount. If the defense mobilization progresses many of our industries will be furnishing materials and supplies either as prime contractors or sub-contractors and if the contracts involved in this case are applied to the City of Milwaukee, it is conceivable that many millions of dollars of valuation will be removed from the local tax base. If this should happen the urban areas which produce defense materiel will be hard pressed to provide the necessary services to make the production of these products possible. Such services consist of water and sewer, adequate streets to provide easy access by trucks, traffic control, police and fire protection and schools for the children of those who are employed in such industries.

While it is not possible to get an accurate figure of the dollar value of contracts which could conceivably contain the partial payment and title passage clause, a survey was conducted by the Tax Commissioner of the City of Milwaukee, as a result of which he estimated that there could be 20 million dollars of value conceivably

affected by this provision in the law. It was the Tax Commissioner's recommendation to the Mayor and Common Council of the City of Milwaukee that attempts be made to legislate the answer to this problem but efforts along that line have not been pre-eminently successful.

Ad valorem taxes have been and will no doubt remain to be the basic medium for raising money by municipalities. It is true, of course, that returns on state income taxes and collections on licenses and other miscellaneous income of the city do make up a proportion of the revenue of a municipality and this revenue in prosperous times is substantial, nevertheless our experience has pointed up the fact that the stability of the ad valorem tax base gives the greatest security and reliability and consequently the basis upon which all municipalities proceed is a strengthening and preservation of the ad valorem tax base. It is to this end that cities are engaging in slum clearance and blight elimination and it is for this purpose that expensive facilities as expressways are being constructed.

In the City of Milwaukee it apparently is not common for federal procurement officers to use partial payment and title passage contracts. Many of our manufacturers for one reason or another prefer to finance their efforts by other means. We cannot, however, escape the fact that there will be a tremendous impact on the ad valorem tax base in the event of a national emergency or a speed-up in the defense effort. It should also be pointed out that the contracts referred to permit manipulation between the sub-contractor, the prime contractor and the federal government with the sole purpose in mind of escaping local taxation. Furthermore, these contracts permit one manufacturer to obtain competitive advantage over other manufacturers and allow certain manufacturers who are substantially or wholly engaged in defense efforts from

escaping their share of local taxation to the detriment of all other manufacturers in the same competitive vicinity.

We want to emphasize most strongly that our interest in this matter does not go to the point that local governments should tax the finished product upon which title has passed because of completion nor do we want to take the position that defense materiel being used in the defense of this country should be taxable locally. All that we are interested in is placing on the local tax roll inventories, work in process and tools. It would seem that the Federal Government could be just as adequately protected by following the terms of the statute (Title 41, Para. 154, U.S.C.A.) rather than by actually taking title upon a partial payment. Thus the City of Milwaukee has no intention at this time of presenting for legislation or urging that airplanes, guns, tanks and other military facilities be taxed or be made part of the local tax base.

It should also be pointed out that the federal contract referred to in this case leads to many administrative difficulties by way of assessment. The Tax Assessor does not know when he goes into a factory that a certain machine is part of a contract or whether it is not; and there is no way of adequately furnishing proof one way or another as to whether a certain item is or is not covered by a partial payment and title passage contract. Furthermore, if the assessor makes a mistake and places property on the roll which should not be there his action affects the tax base of the total assessable property in the community which is used to establish the rate and the result is a rate which is faulty. Furthermore, the municipality will be faced with the probability that it will have to refund large amounts of money with interest as a result of such an honest mistake.

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The jurisdictional statement of the City of Detroit and the County of Wayne adequately sets out the legal basis for the city's position and we are sure that the eminent counsel for these taxing authorities will expand on the statement when their briefs are filed and when oral argument is made before this court. Since our position necessarily is the same as other cities, and especially the City of Detroit and the County of Wayne, we adopt their argument as presented.

### CONCLUSION

We would like to urge the Supreme Court of the United States to hear this matter, both on briefs and oral argument, because the federal questions presented by the appeal are substantial and of extreme public importance to not only the City of Detroit and the County of Wayne but to all municipalities which have a substantial industrial establishment.

*Respectfully submitted,*

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